

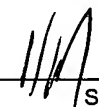


Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) H0003859-0555 (16131)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR on <u>June 16, 2006</u> Signature _____ Typed or printed name <u>Paul J. Esatto, Jr.</u>		Application Number 10/608,912	Filed June 27, 2003
		First Named Inventor Steven J. Winick, et al.	
		Art Unit 2642	Examiner Quynh H. Nguyen
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>30,749</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> _____ Signature Paul J. Esatto, Jr. _____ Typed or printed name 516-7424343 _____ Telephone number June 16, 2006 _____ Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Steven J. Winick, et al. **Examiner:** Quynh H. Nguyen
Serial No: 10/608,912 **Art Unit:** 2642
Filed: June 27, 2003 **Docket:** H0003859-0555 (16131)
For: DUAL SITE SUPERVISION FOR A CONTROL CHANNEL CELLULAR RADIO USED IN A FIRE ALARM REPORTING SYSTEM **Dated:** June 16, 2006

Confirmation No. 7055

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicants are submitting the following remarks in support of the Request for Review filed concurrently with a Notice of Appeal on June 16, 2006. This Request for Review is regarding the final rejection of Claims 1, 2, 4, 7, 8, and 10 dated March 16, 2006. The Examiner's rejection is based upon 35 U.S.C. § 103 (a) in view of Sheffer, United States Patent No. 5,884,184.

Applicants submit that Sheffer fails to teach, suggest or render obvious each and every limitation of independent Claims 1 and 7 for the following reasons. Claim 1 recites, *inter alia*, selecting a cellular control channel with the strongest signal strength which is verified as being available for the assigned carrier to report a status of the fire alarm system; selecting a cellular control channel with a second strongest signal strength which is also verified as being available for the assigned carrier to report a status of the fire alarm system (Emphasis added). Claim 7 is a

corresponding system claim. The system carries out the method steps in Claim 1. Sheffer does not teach or render obvious these features.

Sheffer Does Not Teach Selecting the “Strongest”

Sheffer teaches a method of selecting an available forward channel based upon a preselected criterion. The method involves scanning each control channel (e.g., 22 channels) and measuring the control channel’s signal strength. An available control channel is determined by comparing the measured control channel’s signal strength with a preselected threshold signal strength. Each control channel is sorted based upon a comparison with a threshold range. A potential candidate is a channel that has a signal strength below the threshold range. Sheffer teaches that threshold range is preferably –115 to –125 dBm. The signal strength is determined by the number of sequential uninterrupted transmissions that remain below the threshold range.

If more than one channel is a potential candidate, then a determination of the best suitable (one channel) is performed, i.e., most available or open. This determination is described at Col. 8, lines 35-51. If more than one channel is still available after the determination, then one channel from all of the remaining candidates is randomly selected.

At no time does Sheffer disclose or even suggest selecting the channel with the strongest signal strength. Sheffer does not even mention selecting the strongest channel strength, but rather only selecting a channel that is open or available. Sheffer does not calculate or even determine the channel with the highest signal strength. Simply put, Sheffer does not care about the strongest channel strength, only availability of the channel. The test for availability is not strongest signal strength, but rather a measurement based upon sequential transmissions.

Moreover, the fact that Sheffer teaches randomly selecting one candidate from the remaining candidates, clearly evidences Sheffer’s indifference to “the strongest channel” as well

as the insignificance of the strongest signal channel. At best, Sheffer teaches verifying the availability of a control channel, not determining or selecting the strongest.

In stark contrast, the claimed invention is directed to selecting a cellular control channel with the strongest signal strength that is verified. In the claimed invention, the cellular control channels are sorted and classified according to signal strength, and the strongest signal channel is selected and the radio is set to the selected strongest signal channel. Checking for the availability of the channel is a separate process, i.e., verifying.

Furthermore, there is no motivation to modify the reference to arrive at the claimed invention since the purpose of the claimed invention is different from that of the prior art. Any motivation offered by the Examiner is neither legally sufficient nor factually accurate. The Examiner cites as a reason of obviousness or a motivation to modify Sheffer that “otherwise it would defeat the purpose of the scanning step” not to select the strongest channel. This is not technically true. The purpose of the scanning step is to identify available channels and as such, the scanning is an integral step in such process. The available channels are identified as a function of the channel strength vis-à-vis a predefined threshold. The purpose of the scanning step is not to find the strongest channel. Not selecting the strongest channel would not defeat the purpose of the scanning step. If one would follow the Examiner’s logic, the scanning step would be removed from Sheffer as its purpose “is defeated”, as Sheffer does not specifically teach selecting a cellular control channel with the strongest signal strength. A fact that the Examiner admits.

In contrast, the claimed invention (i) verifies availability of the control channel and (ii) selects the strongest verified control channel. Sheffer does not suggest a motivation to add the additional calculation and selection criterion.

Sheffer Does Not Teach Selecting Two Channels, Strongest and Second Strongest


Sheffer only teaches selecting **one** channel as the forward channel or channel for reporting a status of the fire alarm system. Sheffer specifically states “the step of selecting the forward **control channel**...and randomly selecting **one** of remaining multiple forward control channels. Col. 4, lines 18-25. Had Sheffer intended to select two, e.g., a strongest and second strongest, forward control channels, Sheffer would have stated selecting the forward control **channels** and selecting **at least one** of the remaining multiple forward control channels. The selection of one channel is consistent with the description throughout Sheffer. See Cols. 7-8. See also Abstract “selecting an available forward control channel”.

Furthermore, there is no motivation to modify Sheffer to select two control channels, i.e., the strongest and the second strongest.

Conclusion

Since Sheffer does not teach, suggest or render obvious each and every limitation of independent Claims 1 and 7, the rejection under 35 U.S.C. § 103(a) is improper.

Respectfully submitted



Paul J. Esatto, Jr.
Reg. No. 30,749

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343

SW:ae